

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

ET Docket No. 93-62

Guidelines for Evaluating the Effects
of Radiofrequency Radiation)

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COMMENTS OF
ARCH COMMUNICATIONS GROUP, INC.
SUPPORTING PETITIONS FOR RECONSIDERATION

Arch Communications Group, Inc. ("Arch"),¹ by its attorneys, hereby files these comments in support of certain petitions for reconsideration filed in the above - captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The *Report and Order* revises the Commission's regulations concerning the environmental impacts of electromagnetic energy emissions ("EME") by adopting maximum permissible exposure ("MPE") limits based upon the 1986 NCRP Report No. 86,³ in conjunction with certain aspects of the ANSI/IEEE C95.1-1992 guidelines on

¹ Arch provides wireless messaging services, primarily paging, to approximately 3.0 million units throughout the United States. Arch's operations include local, regional, and nationwide common carrier and private paging systems.

² *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93-62, FCC 96-326, *Report and Order* (rel. August 1, 1996).

³ National Council on Radiation Protection and Measurements, *Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields*, NCRP Report No. 86 (1986).

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exposure to radiofrequency radiation.⁴ The new MPE limits will apply to applications filed after January 1, 1997.⁵

Of particular concern to Arch, the *Report and Order* eliminates the categorical exemption for paging and other Commercial Mobile Radio Services ("CMRS") transmitters operating at greater than 1000 watts thereby obligating such CMRS licensees to conduct environmental evaluations of transmitting facilities to determine compliance with established MPE limits, and to prepare environmental assessments if such MPE limits are exceeded.⁶ In addition, the *Report and Order* creates compliance obligations when the MPE limits are exceeded in an area as a result of emissions from multiple facilities. Specifically, when the aggregate effective radiated power at a shared facility exceeds the Commission-specified limits,⁷ the licensees whose transmitters exceed the power density and field strength limits by one percent of the MPE limits⁸ share the responsibility to bring the area into compliance.⁹

Seventeen petitions for reconsideration of the *Report and Order* were filed with the Commission. Seven of the petitions touch on issues of concern to Arch.

⁴ American National Standards Institute and Institute of Electrical and Electronic Engineers, *Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz*, ANSI/IEEE C95.1-1992 (1992).

⁵ See 47 C.F.R. § 1.1307(b)(4).

⁶ See 47 C.F.R. §§ 1.1307(b)(1), (2) and Table 1; see also *Report and Order* at ¶ 86.

⁷ 47 C.F.R. § 1.1307, Table 1.

⁸ 47 C.F.R. § 1.1310, Table 1.

⁹ 47 C.F.R. § 1.1307(b)(3).

AirTouch Communications, Inc. ("AirTouch") argues that the Commission should reconsider its decision to abandon the categorical exemption for paging facilities.¹⁰ In addition, AirTouch, Ameritech Mobile Communications, Inc. ("Ameritech"), U S WEST, Inc. ("U S WEST"), AT&T Wireless Services, Inc. ("AT&T"), Paging Network, Inc. ("PageNet"), Personal Communications Industry Association ("PCIA"), and BellSouth Corporation ("BellSouth"), each seek reconsideration of the new area-wide compliance obligations created by the *Report and Order*.¹¹ With the exception of AirTouch, these same petitioners also urge the Commission to delay the effectiveness of the new MPE limits until after release of the revised OST Bulletin No. 65.

As discussed in more detail below, Arch supports these seven petitions for reconsideration. Arch agrees that the *Report and Order* improperly abandoned the categorical exemption from compliance evaluations previously available to paging transmitters, thereby exposing paging carriers to unnecessary and expensive regulation. In addition, Arch agrees that the area-wide compliance obligations created by the *Report and Order* are unduly burdensome upon the individual CMRS licensees and should be revised. Finally, insofar as the *Report and Order* defers significant issues relative to the implementation of the new MPE limits to the issuance of the revised OST Bulletin No. 65, Arch agrees that the effectiveness of the new MPE limits should be delayed until one year after the issuance of the revised Bulletin No. 65.

¹⁰ AirTouch Petition at 2-4.

¹¹ See AirTouch Petition at 4-7; Ameritech Petition at 12; AT&T Petition at 6-8; PCIA Petition at 6-8, 14-17; PageNet Petition at 5; BellSouth Petition at 2-4; U S WEST Petition at 5-8.

II. THE COMMISSION SHOULD REINSTATE THE CATEGORICAL EXEMPTION FROM COMPLIANCE EVALUATIONS FOR PAGING FACILITIES.

Arch supports AirTouch's request for reconsideration of the Commission's decision to eliminate the categorical exemption from compliance evaluations for certain CMRS transmitting facilities, including paging facilities, that operate at greater than 1000 watts. The categorical exemption was originally provided to paging and cellular carriers because there was little probability that such facilities significantly contributed to EME exposure.¹² As demonstrated by AirTouch, however, the record evidence before the Commission does not support the contrary conclusion that paging facilities now significantly contribute to EME exposure.¹³ With regard to both tower- and roof-mounted antennas for paging facilities, the Commission has admitted its decision was based upon nothing more than "an abundance of caution."¹⁴ Indeed, according to the Commission, "there is no evidence that typical installations in these services cause ground-level exposures in excess of" the established limits.¹⁵

Elimination of the categorical exemption from compliance evaluation for paging facilities will subject the paging industry to substantial additional costs and regulatory burdens associated with the new environmental compliance rules. The additional compliance costs and burdens simply cannot be justified based upon a record which shows no evidence that paging facilities will significantly contribute to EME

¹² PCIA Petition at 3.

¹³ AirTouch Petition at 2-4.

¹⁴ *Report and Order* at 91.

¹⁵ *Id.* at 92.

exposure, particularly in light of the low revenues-per-unit and slim profit margins of the paging industry. Therefore, Arch urges the Commission to grant AirTouch's petition for reconsideration and reinstate the categorical exemption from compliance evaluations for paging facilities.

III. THE COMMISSION SHOULD DELAY THE EFFECTIVENESS OF THE NEW EXPOSURE LIMITS UNTIL AFTER ADOPTION AND RELEASE OF THE REVISED OST BULLETIN NO. 65.

Should the Commission decide not to reinstate the categorical exemption for paging facilities, Arch urges the Commission to grant the petitions for reconsideration of Ameritech, U S WEST, AT&T, PageNet, PCIA, and BellSouth and defer the effectiveness of the new exposure limits until after issuance of the revised OST Bulletin No. 65. These petitions demonstrate that the rules promulgated in the *Report and Order* are not sufficiently clear and leave critical terms undefined or ambiguous.¹⁶ In essence, the Commission needs to provide details on how it expects licensees to comply, *i.e.*, where licensees should measure EME, how often they should measure, what constitutes "areas" for purposes of area-wide compliance, and what steps are to be taken if MPE limits are exceeded. The forthcoming revised OST Bulletin No. 65 is an opportunity for the Commission to provide such clarification. The release of the revised bulletin, however, is not expected until November or December of 1996.¹⁷ As a consequence, the January 1, 1997 effectiveness date for the new MPE limits is unrealistic and Arch urges the Commission to defer the effectiveness date until one year after issuance of the revised OST Bulletin No. 65.

¹⁶ See, *e.g.*, PageNet Petition at 3-4; PCIA Petition at 6-8.

¹⁷ AT&T Petition at 2.

Further, for the reasons stated by Ameritech, PCIA and PageNet,¹⁸ Arch submits that the revised bulletin should be subject to public notice and comment procedures. Given the expected significance of the revised bulletin, it is vital that the industry participate in the formulation of that document.

IV. THE COMMISSION SHOULD REVISE THE AREA-WIDE COMPLIANCE OBLIGATIONS OF LICENSEES.

Arch agrees with AirTouch, Ameritech, U S WEST, AT&T, PageNet, PCIA, and BellSouth that the Commission should modify the area-wide compliance obligations of licensees. Specifically, for the reasons set forth by Ameritech, AirTouch, and BellSouth, Arch submits that the site owner, rather than individual licensees, should be responsible for ensuring area-wide compliance in multiple transmitter situations.¹⁹ Unlike the individual licensees, the site owner has access to the entire site and can control the licensees' use of the site and can therefore ensure the compliance of a given area. By contrast, it would be difficult, if not impossible, for individual licensees to gather all the necessary site information and to enforce compliance by other collocated licensees.²⁰

¹⁸ See Ameritech Petition at 7-8; PCIA Petition at 8-10; PageNet Petition at 4.

¹⁹ AirTouch Petition at 4-7; Ameritech Petition at 12; BellSouth Petition at 4.

²⁰ With regard to circumstances where licensees are using a site in compliance with MPE limits and a newcomer causes noncompliance, Arch maintains that the site owner is the proper party to be responsible for compliance of the area. Nevertheless, should the Commission reject the site owner proposal, Arch agrees with U S WEST that liability for noncompliance should be borne by the newcomer licensee causing noncompliance. U S WEST Petition at 5-7.

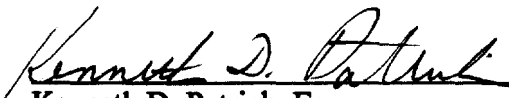
Nevertheless, should the Commission decline to make the site owner responsible for area-wide compliance, Arch agrees with AT&T, PageNet, and PCIA,²¹ that the threshold for area-wide compliance obligations should be raised from one percent to ten percent or more. As demonstrated by these petitioners, a ten percent threshold would meet the Commission's important regulatory objectives while significantly minimizing unnecessary and expensive regulatory burdens upon paging carriers and other CMRS licensees.

V. CONCLUSION

For the reasons set forth above, Arch urges the Commission to grant the petitions for reconsideration of AirTouch, Ameritech, U S WEST, AT&T, PageNet, PCIA, and BellSouth consistent with the above discussion.

Respectfully submitted,

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Date: October 8, 1996

²¹ AT&T Petition at 6-8; PageNet Petition at 5; PCIA Petition at 14-17.

CERTIFICATE OF SERVICE

I, Shelia L. Smith, do hereby certify that copies of the foregoing "Comments of Arch Communications Group, Inc. Supporting Petitions for Reconsideration" were served this 8th day of October, 1996 by hand delivery to the following:

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